

NATURAL RESOURCES COMMISSION
Meeting Minutes of July 21, 2015

COMMISSION MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Patrick Early
Thomas Easterly
Doug Grant
R. T. Green
Laura Hilden
Jake Oakman
Donald Ruch
Robert Wright

NRC, DIVISION OF HEARING STAFF PRESENT

Sandra Jensen
Dawn Wilson
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Joe Hoage	Executive Office
Sam Hyer	Executive Office
Cheryl Hampton	Land Acquisition
Steve Hunter	Law Enforcement
Dan Bortner	State Parks and Reservoirs
Tom Swinford	Nature Preserves
Linnea Petercheff	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Phil Marshall	Communications

GUESTS PRESENT

Jack Corpuz	Carol Comer
Erin Baird	Erin Huang
Barb Simpson	

Bryan Poynter, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EDT, on July 21, 2015 at Fort Harrison State Park, Garrison, 6830 North Post Road, Theodore Room, Indianapolis. With the presence of eleven members, the Chair observed a quorum.

The Chair asked for a motion for the approval of the Commission's May 19, 2015 minutes.

Thomas Easterly moved to approve the minutes for the meeting held on May 19, 2015, as presented. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND ADVISORY COUNCIL CHAIR

Director Cameron Clark provided his report. He noted that the Court of Appeals recently issued an opinion, *Ind. Dept. of Natural Res. v. Whitetail Bluff, LLC* involving issues related to hunting white-tailed deer behind high fencing. The opinion finds that high-fenced hunting "not only is it an unregulated and legal activity, but the majority of the Court of Appeals...suggest that DNR does not have as much regulatory authority as we believed that we did. We've looked at [the opinion] and we've put together a number of licenses and permits that we don't feel like we are in a position to issue any more. That's creating a bit of a stir out there amongst the public and with certain legislators." The Director said the opinion may impact six permits currently issued by the Department: wild animal possession permit, game breeder's license, turtle possession permit, fish hauler and supplier permit, reptile captive breeder license, and a bait dealer permit. "We are fairly certain we no longer have the jurisdiction to issue [these permits]. That will make this next legislative session pretty interesting. There will be some legislation proposed to put some guardrails around the high-fenced hunting operations, but it will also lead to some lively discussions as to how much jurisdiction the Department may or may not get back from the legislators."

The Director noted that the Department has not received much feedback regarding the fee increases pertaining the state parks and state forests. He noted that some Department properties have done well even with the increase in gate fees. The Director also noted that the weather has taken a pretty significant toll on a number of the properties. "As you can imagine, we've had some properties along the Wabash [River] that have experienced a lot of flooding. We've had some campgrounds and parks, at times, completely closed." He reported that the Department refunded camp fees. "We don't know exactly the extent of the damage, because we are continuing to experience problems both in terms of revenue, as well as, just operationally." He said the most recent storms wreaked havoc on Versailles and Clifty Falls State Parks. "The State Park crew has been "stellar keeping the properties up, cleaned, and whatever else that needs to be done. As a result of the storms, the Division of State Parks will take a significant revenue hit."

The Chair asked Dan Bortner, Director of the Division of State Parks and Reservoirs, to provide a brief report.

Dan Bortner said, "Mother Nature has put us in a timeout. She does that every once in a while. We control what we can. ...Those of us in Indianapolis just try out of the way and let our rock

stars do what they do.” He said park staff has moved many people in a short amount of time and made sure people were safe. “Guest services become the highest priority. I just can’t say enough for the staff at Versailles, Clifty, and the Upper Wabash reservoirs. People have done an amazing job.” He said that the Division will evaluate the storm’s impacts and make a report to the Commission at a later meeting.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, reported that the recent weather has impacted the northern flood control reservoirs—Mississinewa, Salamonie, and J.E. Roush—causing the reservoirs to be full most probably through Labor Day. “Not only did we take a significant hit today and during July 4 weekend, but our third biggest weekend, Labor Day, may be tough for those properties particularly.” He said the purpose of the reservoirs is to guard downstream properties.

Davis reported that the Visitor’s Center project at Goose Pond has been slowed by the weather, but work is ongoing and is projected to be completed this fall. The project at Eagle Marsh in Allen County, which is the guarding of the meeting of the two basins against at least Asian carp among other invasives, has also been substantially delayed by weather. There have been several ten-year flood events already this year, but the Department expects progress this fall with project completion next spring.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, reported that the Division of Water has been active regarding several situations involving private dam owners. He noted that there are over 400 high hazard dams in Indiana under private ownership. Division of Water staff is coordinating the safe lowering of several water impoundments. “So far, everything has been successful, and we are all hoping for a little dry weather to relieve a little pressure.” Smith also noted that the Division of Law Enforcement has been extremely active during the recent weather events, and in one weekend conducted 12 swift-water rescues.

Smith reported regarding the archaeological discovery at the Singleton Quarry located in Lake County. He said an historic burial was found within the quarry. Staff with the Division of Historic Preservation and Archaeology is working with the Singleton Quarry’s archaeologist to assess the historical find. “At this point in time, [Singleton Quarry] is removing that piece of the property out of the quarry project.” Smith said the Department will continue to learn about the find as the archaeologists conduct additional site reconnaissance.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council did not meet in June.

CHAIR AND VICE CHAIR

Updates on Commission and the AOPA Committee

Vice Chair Stautz, Chair of the Commission’s AOPA Committee, reported that the Commission’s AOPA Committee met in June. She noted that there is a meeting planned for September.

The Chair acknowledged, on behalf of the Commission, Thomas Easterly, Commissioner of the Indiana Department of Environmental Management (IDEM), for his contribution and efforts on behalf of the Natural Resources Commission. He noted that Commissioner Easterly is retiring from state employment, the longest tenured IDEM Commissioner. “As a result, his seat here will be vacated for a while, only to be filled by someone as equally capable. I can’t thank you enough for the work and service that you’ve done... You have been one of our most dedicated in terms of attendance and contribution... Thank you so much for all you’ve done and we wish you well in your retirement.”

Easterly thanked the Chair and Commission members for their sentiments.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Bloomfield Barrens Addition Nature Preserve in Spencer County

Tom Swinford, Assistant Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve, Bloomfield Barrens Addition, is located in Spencer County. He said the addition is about 619 acres and is a “fascinating area along Little Pigeon Creek, which is a big conservation area.” He said the Bloomfield Barrens is co-managed between the Division of Nature Preserves and the Division of Fish and Wildlife. “We’ve kind of co-mingled the funds over the years and put together a large corridor project, which is well over 1,200 acres.” Swinford said hunting is allowed on the east side of Pigeon Creek, and noted that white-tailed deer reduction was recently conducted on the Bloomfield Barrens Nature Preserve. “It’s an interesting area. This will be protecting a lot of floodplain forest, which has a lot of flood water storage capacity in the wetlands.” Swinford explained that the core of the nature preserve protects what are termed “post-oak barrens,” which are “really interesting, very park-like open oak woodlands...and managed by fire. It’s a real rare plant community, mostly gone from Indiana.” He noted that the area is one of the priority sites in the statewide nature preserve system. Swinford recommended the 619-acre tract be dedicated as an addition to the Bloomfield Barrens Nature Preserve.

The Chair asked how the tract was acquired.

Swinford said the site has been owned by the Department for a long time, but has not been dedicated; accept for the initial core of the acreage. He noted that the area was part of a special wetlands fund that was allotted previously.

John Davis noted the wetlands fund was established in the 1990s.

The Chair commented, “If you ever have an opportunity to go on a nature preserve hike with Tom, it’s one of the best nature preserve hikes you’ll ever have.”

Thomas Easterly moved to approve the dedication of the Bloomfield Barrens Addition Nature Preserve. Jake Oakman seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Spring Lake & Bog Nature Preserve in Allen County

Tom Swinford also presented this item. He said the proposed nature is 98 acres located in the northwest part of Allen County, just outside the Fort Wayne city limits. The preserve protects a portion of the only and natural lake in Allen County and an extinct lake bog. “It’s pretty fascinating for Allen County and still has a lot of those northern wetland plants and animals that are characteristic in Northeast Indiana.”

Doug Grant moved to approve the dedication of the Spring Lake & Bog Nature Preserve. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of approval of amendments to nonrule policy document, Information Bulletin 28, which provides standards regarding easements on properties owned by the Department of Natural Resources; Administrative Cause Number 07-109A

John Davis presented this item. He noted that there were several typographical errors in the proposal. Davis explained that a reference to the “Department” in Section IV(B), last sentence in the second paragraph should be further amended to read:

The **director of the department or the director’s designee** may also elect to submit any request to the commission for additional review due to special circumstances.

He said the amendments to the nonrule policy would reflect actual Department practice since 2004 or 2005. He said the current practice is for Director and the Department to review, consider, and approve requests for the grant of easements across properties owned by the Department in the normal course of land management. Davis noted, however, that if there is an area of concern, controversy or doubt regarding a request for easement, the easement request would be presented to the Commission.

Thomas Easterly asked, “So the only changes are just editorial?”

Davis explained that the amendments would change the existing nonrule policy language, which states that all easement requests are to be presented to the Commission for approval. He said the amendments would provide that the director of the Department or the director’s designee would

review and approve easement requests, unless the easement request is controversial or has some element that may require Commission discussion.

Sandra Jensen asked whether the references to “department” should be further amended to read “director of the department or the director’s designee” in order to promote consistency throughout the document.

Director Clark and Chris Smith agreed that the references should be consistent throughout the document.

Robert Wright moved to approve, as amended to the nonrule policy providing standards for the issuance of easements across properties owned by the Department, as amended. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Consideration of nonrule policy document, Information Bulletin #76, to establish the monetary compensation rate associated with game bird habitat contracts; Administrative Cause No. 15-083D; Administrative Cause No. 15-083D

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. He noted that the Game Habitat Act (the “Act”) was adopted in the early 1980s, which required hunters hunting for quail, pheasant, or wild turkey to purchase a Game Bird Habitat stamp for a cost of \$1. He said the stamp is currently \$6.75 and mourning doves have been added to the species list. The Act requires that all funds from stamp sales, plus \$4 from a nonresident hunting license sale and \$40 from a nonresident deer hunting license sale, be deposited into the Game Habitat Restoration Fund established by IC 14-22-8-6 as managed by the Department of Natural Resources. The funds are to be used for land acquisition for game bird habitat and reimbursement to private landowners who are developing game bird habitat on private lands.

Reiter said the statute, prior to this year’s amendment, set the maximum amount of reimbursement at \$100. “Since then, prices have gone up considerably so we need to have that raised to \$330 per acre per year for that cost share.” He explained that with this year’s statutory change, the Commission is given authority to set the cost of reimbursement.

The Chair asked for clarification regarding the computation of the maximum compensation of \$330.

Reiter explained that the maximum compensation of \$330 was determined using the average cost over the past couple years “of what we would have paid full price for those practices” completed by private landowners in establishing game bird habitat on private lands.

R. T. Green moved to approve nonrule policy document, Information Bulletin #76, to establish the monetary compensation rate associated with game bird habitat contracts. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of amendments to nonrule policy document, Information Bulletin #59, to establish free sport fishing days for 2016 and 2017; Administrative Cause No. 15-089D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She explained that the Division of Fish and Wildlife is requesting approval for the free sport fishing days for 2016 and 2017. Since 2013, the Division is authorized (IC 14-22-18-1) to offer four free fishing days. “We have begun with the third Saturday in April and the third Saturday in May, in which we typically have Go-FishIN family workshops where families come and learn to fish together.” She noted that the third Saturday in May is also national Kids to Parks Day. Petercheff said the two days in June are annual nationwide free fishing weekends sponsored by the Recreational Boating and Fishing Foundation.

The Chair asked whether it was permissible to give the Department discretion to amend this policy document as needed rather than seeking approval by the Commission.

Petercheff noted that the statute requires Commission approval, but “maybe if Commission approval is just approving the formula using the third Saturday in April, the third Saturday in May, and first full weekend in June.”

The Chair said, “I realize it’s not an onerous agenda item; it’s just one more thing we could allow the [Department] to have a formula to use. If there happens to be a reason to amend [the formula] that would be a reason to come back to the Commission.”

Jake Oakman moved to approve amendments to nonrule policy document, Information Bulletin #59, to establish free sport fishing days for 2016 and 2017. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Director Clark invited Commission members to the 10th Anniversary celebration of the fishing pond located behind the State Fair DNR Building. The event is scheduled to be held on August 7, 2015 at 9:00 a.m. He noted that Governor Pence and other dignitaries plan to attend.

NRC, DIVISION OF HEARINGS

Consideration of report on rule processing, written comments, public hearings, DNR responses to public comments and hearing officer analyses, and recommendations regarding final adoption of amendments to 312 IAC 9, governing fish and wildlife; LSA #14-477(F); Administrative Cause No. 14-096D

Sandra Jensen, Hearing Officer, presented this item. She noted that the rule amendment package is different from the Commission’s customary rule adoption approval process. The Commission gave preliminary adoption to the rule amendments in September 2014, which included amendments to seven rules within 312 IAC 9 and the addition of one new rule creating a new trapper education permit. After preliminary adoption, the Department’s fiscal analyses were

submitted to the State Budget Agency's Office of Management and Budget. Jensen noted that all statutory requirements governing rule adoption were followed regarding this rule proposal.

Jensen said the determinations made by the Indiana Court of Appeals in its opinion, *Ind. Dept. of Natural Res. v. Whitetail Bluff, LLC*, 25 N.E.3d (Ind. Ct. App. 2015), impacted the Department's jurisdiction over certain matters. She explained that the Court of Appeals opinion impacts three of the rule proposal including in this rule package. As a result, the Department has requested that the proposed rule amendments at 312 IAC 9-5-9, 312 IAC 9-10-4, and 312 IAC 9-11-2 be removed from the rule package. Jensen indicated her agreement with the Department's request, and said the Department would review the impact of the Court of Appeals' opinion. "We certainly don't want to go forward with any rules that we may not have authority to go forward with."

Jensen said that through the public hearings the proposed amendments to 312 IAC 9-10-16, governing permits for the chasing of eastern cottontail rabbits on dog training grounds, it has become apparent that there are some amendments that "had not been fully considered possibly in the fiscal analyses as well as a variety of other concerns that the public." She said the Department has requested additional time to consider the aspects of the proposed amendments to determine if changes are required.

Jensen noted that the rule amendment proposal is summarized on page eight of the Hearing Officer's Report. She recommended that the Commission take the following actions, as presented in Exhibit D attached to the Hearing Officer's Report:

1. Take final action to remove 312 IAC 9-5-9, 312 IAC 9-10-4, and 312 IAC 9-11-2 from the proposal;
2. Take final action to adopt the rule amendments to 312 IAC 9-3-10, 312 IAC 9-10-9, 312 IAC 9-10-11, 312 IAC 9-10-15, and the addition of 312 IAC 9-10-24; and
3. Authorize the deferral of final action with respect to the proposed amendments to 312 IAC 9-10-16.

Jensen noted that the third recommendation would defer adoption of proposed amendments at 312 IAC 9-10-16. The rule proposal, if given final adoption by the Commission, would be processed under the same document, LSA #14-510(F), but as a separate adoption action and with separate publication in the *Indiana Register*. Jensen said she has consulted with the Legislative Service Agency, which has confirmed that the statutory authority (IC 4-22-2-29) does allow for separate rule adoption actions. "The Attorney General's Office has informally indicated that [the separate action] is possible provided...the outcome ultimately would not be a substantial change to any of the rules in the package." Jensen said the rule sections proposed to be amended are "not intertwined in any way...and with that representation to the Attorney General's Office, [the Attorney General's Office] felt as though that would not create a problem." She concluded by seeking Commission approval of the three final actions as recommended.

The Chair asked whether there would be additional public hearings regarding the proposed rule amendments at 312 IAC 9-10-16. Jensen answered in the negative.

Vice Chair Jane Ann Stautz moved, with respect to proposed amendments to 312 IAC 9, governing fish and wildlife, as follows:

1. Remove 312 IAC 9-5-9, 312 IAC 9-10-4, and 312 IAC 9-11-2 from the rule amendment proposal;
2. Adopt, as final, the rule amendments to 312 IAC 9-3-10, 312 IAC 9-10-9, 312 IAC 9-10-11, 312 IAC 9-10-15, and the addition of 312 IAC 9-10-24 as presented in Exhibit D of the Hearing Officer's Report; and
3. Defer final action with respect to the proposed amendments to 312 IAC 9-10-16.

R. T. Green seconded the motion. Upon a voice vote, the motion was carried.

Consideration of report on rule processing, public hearing and hearing officer analyses, with recommendation regarding final adoption of amendments to 312 IAC 2-4 and 312 IAC 5-2, and addition of a new rule 312 IAC 5-3, governing organized activities and tournaments on designated public waters; LSA #14-515(F); Administrative Cause No. 14-121L

Dawn Wilson, Hearing Officer, presented this item. She explained that the rule amendments were initially presented to the Commission for preliminary adoption in 2012, but were withdrawn to allow for the 2014 readoption of the article governing boating activity (312 IAC 5). She noted that the rule proposal effectively repeals 312 IAC 2-4 and adds 312 IAC 5-3-25. The proposal also amends 312 IAC 5-5-3 governing litter and other waste disposal from a boat. Two definitions previously defined in 312 IAC 2-4 are added at 312 IAC 5-2-12.5 and 312 IAC 5-2-18.5, to define "fishing tournament" and "major organized boat activity." She noted that the Commission's Division of Hearings has maintained the appropriate rule adoption documentation as required by statute and Executive Order.

Wilson noted that the Legislative Services Agency identified minor section reference alignments and suggested technical revisions to the published language. Wilson said the references and technical revisions have been incorporated in Exhibit A as attached to the Hearing Officer's Report. She then recommended Commission give final adoption as presented in Exhibit A.

Thomas Easterly moved to give final adoption to the repeal of 312 IAC 2-4 and 312 IAC 5-2, and addition of a new rule 312 IAC 5-3, governing organized activities and tournaments on designated public waters. Jake Oakman seconded the motion. Upon a voice vote, the motion carried.

Consideration of amended report on rule processing, public hearing, and hearing officer analyses with recommendations regarding final adoption of amendments to 312 IAC 9-12, governing special circumstances hunting safety cards; LSA #14-511(F); Administrative Cause No. 14-141D

Jennifer Kane, Hearing Officer, presented this item. She explained that proposed are the addition of 312 IAC 9-12-2.5 to establish a special circumstances hunter education certification and issuance of a special circumstances hunter safety card. 312 IAC 9-12-3 is also proposed to be amended to allow an individual who holds a special circumstances hunter safety card to purchase a hunting license. Kane said the Department of Natural Resources may issue a “special circumstances hunting safety card” to an individual with special circumstances as defined at IC 14-22-12-1.8, and who attends a complete course of instruction in hunter education offered by the DNR but is unable to pass the required testing. 312 IAC 9-12-3(b)(6) is added to include that presentation of a special circumstances hunting safety card issued by the DNR demonstrates successful completion of a hunter education program.

Kane said that under IC 14-22-12-1.8(g), a special circumstances hunter must comply with the requirements provided by statute and rule, including obtaining a valid hunting license issued under IC 14-22-11. The special circumstances hunter must also be accompanied by an individual who is at least 18 years of age and holds a valid hunting license. IC 14-22-12-1.8(h) requires that the accompanying individual must be in close enough proximity to monitor the special circumstances hunter’s activities and be able to communicate with the special circumstances hunter at all times. The individual may not accompany more than two special circumstances hunters at one time.

Kane noted that following publication of the rule proposal in the Indiana Register and the dissemination of the Hearing Officer’s Report, it was discovered that IC 14-22-12-1.8(a)(2) was amended in the most recent Legislative Session effective July 1, 2015 (P.L. 233-2015). Section 26 of the PL 233-2015 amended the definition of “individual with special circumstances” striking the word “child” and inserting “student”. Sections 272 and 273 repealed IC 20-35-1-2 and IC 20-35-1-5, and Section 274 added IC 20-35-1-8, which defines “student with a disability”. Kane explained that with these newly effective statutory changes, she recommended to further amend the proposal at 312 IAC 9-12-2.5(a)(2). She said the word “child” is deleted and replaced with “student,” and the referenced statute is amended to “IC 20-35-1-8.”

Kane said the proposed new rule, 312 IAC 9-12-2.5, and the amendment to 312 IAC 9-12-3, as presented in “Exhibit A” of the Hearing Officer’s Amended Report, appear to satisfy the requirements to establish the statutory criteria for determining qualifications for a special circumstances hunting safety card and to adopt rules to carry out the intent of IC 14-22-12-1.8. She said the proposed amendments are appropriate and are presented for final adoption.

Robert Wright moved to approve amendment to 312 IAC 9-12, governing special circumstances hunting safety cards. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of technical amendments to nonrule policy document, Information Bulletin #36, which provides procedural guidelines for the interpretation of the Conservancy District Act (IC 14-33); Administrative Cause No. 15-045W

Jennifer Kane also presented this item. She explained that the proposed amendments to the nonrule policy document are technical in nature. She said the nonrule policy provides procedural guidelines for the interpretations of the Conservancy District Article (IC 14-33). She noted that the corrections have been highlighted in the back up materials. Kane explained that a sentence is added to History Section (page two), memorializing the amendments, if approved; correction of a statutory citation (page eight); correction of the mailing address of the Commission's Division of Hearings (page nine); and an email address is updated (page 11). Kane recommended the technical amendments be given final approval, with subsequent publication in the *Indiana Register*.

Chris Smith asked whether there were other existing nonrule policies that would require email address updates.

Kane said that the Commission created a generic email address and believed existing nonrule policy document have incorporated the updated email address as applicable.

 moved to approve the technical amendments to the nonrule policy document, Information Bulletin #36, which provides procedural guidelines for the interpretation of the Conservancy District Act (IC 14-33). Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting adjourned at approximately 10:42 a.m., EDT.